

## Ordinance No. 47-026

AN ORDINANCE CREATING NEW CHAPTER 3.94 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ORGANIZED FARMER'S MARKETS, AND THE TEMPORARY OR INTERMITTENT SALES OF CERTAIN AGRICULTURAL PRODUCTS, PRODUCE AND MERCHANDISE AT SUCH FARMER'S MARKETS WITHIN THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS:

SECTION 1. Section 3.94.010 of the Code of the City of Wichita, Kansas, shall read as follows: **"Findings and Purpose.** It is hereby found that farmer's markets, as defined herein, operate businesses or conduct activities, in most cases, as retail operations and with a personal profit or non-profit purpose. The Governing Body finds that it is necessary, in the interest of the public health, safety, and welfare, to regulate the time, place, and manner of farmer's market activities within the City. It is the purpose of this chapter, therefore, to control certain farmer's market activities, to require certain licensing procedures, to assist in regulating farmer's markets, to protect consumers, and to protect adjoining property owners as well as the integrity of residential and commercial districts within the City."

SECTION 2. Section 3.94.020 of the Code of the City of Wichita, Kansas, shall read as follows: **"Definitions.** For the purpose of this chapter, the following words shall have the following meanings, unless the context otherwise requires.

(a) "Farmer's Market" means an outdoor place or market area with a formalized location where more than one Kansas farmer or grower gathers to sell agricultural products they have grown or raised. Other activities and other sellers may be accommodated at the market, but the sale of agricultural products shall be the focal point of the market activity. Other products that may be sold would typically include dried flowers, plants, nursery products, crafts and

handicrafts that are made in the home, original artwork and certain prepared foods as approved by the City of Wichita Environmental Services Department, such as baked goods, preserves, pickles and cheese.

(b) “Person” means any individual, corporation, partnership, association or other entity.

(c) “Market Operator” means the person responsible for running and managing the farmer’s market on a day-to-day, week-to-week and/or month-to-month basis. The Market Operator is the designated person responsible for operational decisions such as vendor selection and enforcement of the market’s adopted and prescribed vendor rules and regulations. The market’s rules and regulations must be in accordance with all relevant federal, state and local regulations. A copy of the rules and regulations for the market must be submitted to the City for review before a Farmer’s Market license is issued.

(d) “Merchandise” means any agricultural produce, plants, nursery products, flowers, baked goods, handicrafts, goods, wares, food, food products, or any product of any kind that can be bought and sold.

“Transient merchant”, “itinerant merchant” or “itinerant vendor” shall be as defined in Chapter 3.95 of the Code of the City of Wichita.

SECTION 3. Section 3.94.030 of the Code of the City of Wichita, Kansas, shall read as follows: “**License required.** It shall be unlawful for any market operator or person, or any agent, servant or employee to engage in, carry on, or conduct a farmer’s market without first having obtained the required license from the City. A separate farmer’s market license is required for each location at which a farmer’s market is held or conducted.”

SECTION 4. Section 3.94.040 of the Code of the City of Wichita, Kansas, shall read as follows: “**License fees.**

(a) An application for a farmer’s market license shall be accompanied by a license application fee. Market operators may elect to include participating vendors and sellers who are

otherwise required to be licensed by this Chapter as part of the market operator's license (but excluding those vendors or sellers defined in items (c)(i), and (c)(ii) below), or may elect to have participating vendors and sellers who are otherwise required to be licensed by the city separately obtain their required city licenses. The application fees for a farmer's market may be issued by the week, by the month, or on an annual basis per the following fee schedule:

Per week - \$50

Per month - \$75

Per 7 month growing season - \$150

(b) A license shall be valid and effective only for the dates and times of operation set forth in the license, and for not longer than one seven month growing season, and no sales shall be conducted during any other hours on any other dates.

(c) A farmer's market license may be a blanket license for participating vendors, except for the following types of vendors, producers or sellers who are *required* to obtain their own separate City of Wichita license as set forth in the Code of the City of Wichita:

- (i) Food vendors, food processors, food establishments or temporary food establishments as defined in State Law and by Chapter 7.22 of the Code of the City of Wichita. When a licensee is applying for said license solely to participate in an organized, city-licensed farmer's market, the license fees as set forth in Chapter 7.22 shall be waived.
- (ii) Activities and/or operations of such a nature as to be considered an amusement ride, ride device, circus, carnival, rodeo or wild animal show per the Code of the City of Wichita.

SECTION 5. Section 3.94.050 of the Code of the City of Wichita, Kansas, shall read as follows: "**License nontransferable.** A license is not transferable to any other market operator,

person, firm or corporation and cannot be used for any activity or at a location other than those listed on the application and approved for licensing.”

SECTION 6. Section 3.94.060 of the Code of the City of Wichita, Kansas, shall read as follows: “**License application.** A farmer’s market operator shall obtain a license through the City Treasurer’s office. A license may be issued only upon the completion of a license application that shall be on a form provided by the City Treasurer. A separate farmer’s market license is required for each location at which a farmer’s market is held or conducted. The farmer’s market application shall contain the following information:

- (a) Name, date of birth and contact information of the market operator and applicant;
- (b) The name and permanent address of the market operator making application, and, if the market operator is not an individual, the names and addresses of the officers of the corporation or members of the partnership, association, or other entity, as the case may be;
- (c) If the market operator is a corporation, the name and permanent address of the market operator’s registered agent or office;
- (d) Proof of a current sales tax license from the State of Kansas for the market operator and all transient merchant vendors, or proof of exempt status from state sales tax;
- (e) Address of the location where the market operator intends to operate the farmer’s market;
- (f) A brief description and/or listing of the name and nature of the type of business to be conducted and the types and mix of vendors who will participate in the farmer’s market activities;
- (g) Completed information regarding any and all participating vendors that qualify as “transient merchants” under Chapter 3.95 of the Code of the City of Wichita. Such transient merchant information must be submitted on a form and in detail as required by

the City and as provided in the farmer's market license application. If any transient merchant vendor not included as part of the originally submitted and approved farmer's market license application subsequently participate in a licensed farmer's market, the market operator shall immediately provide the City required information for the vendor or vendors, or shall direct the transient merchant vendor or vendors to obtain required City transient merchant license or licenses. "Transient merchants" who participate in a farmer's market may separately apply for their own license with the City of Wichita if they are not included as part of the farmer's market license application. However, any participating "transient merchant" shall be licensed under either the farmer's market license or under their own separately-obtained "transient merchant" license;

(h) The specific date(s) and times for which the right to operate the farmer's market is desired;

(i) A sketch or drawing of the proposed farmer's market site showing the approximate dimensions of the area being used, the proximity to buildings, parking lots, rights-of-way or other such areas, and a description of any structure, implement, stand, display prop, or other such items used for the farmer's market, including signs, banners or other attention getting devices;

(j) The name, address, telephone number and written permission of the owner, or tenant in possession of the location described in the application, upon which the applicant intends to conduct the farmer's market operation and activities;

(k) A statement as to whether or not the market operator and applicant has within two years prior to the date of the application been convicted of any felony; and

(l) A signed statement from the market operator and applicant indicating that all of the information provided is true and correct.

SECTION 7. Section 3.94.070 of the Code of the City of Wichita, Kansas, shall read as follows: **Issuance of license.** (a) A farmer's market license may be issued only upon completion of the application, payment of required license fees, and a showing that the farmer's market, activity, operator or licensee is not proposing to operate in violation of the prohibited acts stated in Section 3.94.110, or in violation of any state, federal or local law. Application for a farmer's market license shall be made not less than 10 business days prior to the date(s) for which the activity is scheduled. Upon receipt of a properly completed application for a farmer's market license, the City Treasurer shall refer the application to the appropriate city departments for investigation and recommendation regarding issuance of the license.

(b) If a license is not issued, written notice shall be mailed, faxed, electronically issued or hand delivered to the applicant indicating the reason for the denial, and shall also set forth information regarding the right of the applicant to appeal the denial.

(c) The issuance of a license shall not otherwise prohibit enforcement of this chapter or any other laws, and further, shall not authorize the licensee to operate his or her business in violation of the Wichita-Sedgwick County Unified Zoning Code, as set forth in Title 28 of this code.

SECTION 8. Section 3.94.080 of the Code of the City of Wichita, Kansas, shall read as follows: **Display of license.** A licensee shall be required to display the farmer's market license while any activities pursuant to the license are being conducted. The license shall be posted in plain view to all customers or others at the location, and to law enforcement officers and other enforcement officers of the city.

SECTION 9. Section 3.94.100 of the Code of the City of Wichita, Kansas, shall read as follows: **Revocation of license.** (a) The Superintendent of the Office of Central Inspection may revoke any license issued under this chapter, for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for license.

(2) Fraud, misrepresentation or false statement made in the course of carrying on the business.

(3) Any violation of the provisions of this chapter.

(4) Any violation of Chapter 7.41 of the City Code, pertaining to the prohibition of loud and unnecessary noise.

(b) The superintendent of central inspection shall notify the licensee of the revocation of his or her license in writing, setting forth the grounds for revocation, which shall be hand delivered to the licensee, or mailed to the licensee's permanent address appearing on the application. Upon five days' written notice to the person holding any license issued under the provisions of this chapter the Director of Central Inspection shall have authority to revoke the license.

(c) Any person aggrieved by the revocation of a license as provided in this chapter shall have the right of appeal to the city council as set forth in Section 3.94.120(b).

SECTION 10. Section 3.94.110 of the Code of the City of Wichita, Kansas, shall read as follows: **Prohibited acts.** It is unlawful for any farmer's market operator, seller, grower, producer, food service vendor or transient merchant to:

(a) Conduct business or carry on activities in violation of any zoning requirements of the city, including setback requirements, and as specifically outlined in Art. III, Sect. III-D.6.jj of the Wichita-Sedgwick County Unified Zoning Code;

(b) Create noise in violation of Chapter 7.41 of the city code;

(c) Provide any false or misleading information in completion of any license application;

(d) Fail to obtain permission of the property owner where such activity is being conducted;

(e) Fail to provide, at the request of the purchaser or customer, a written receipt for purchases exceeding \$5.00 (five dollars) or as required by the State of Kansas;

(f) Fail to provide any customer, or other such person, her or his name, the name of the company

or organization represented, the name of the product, or make any representation as to identity which is false or misleading;

(g) Fail to allow authorized law enforcement officers or other enforcement officers of the city to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business;

(h) Fail to remove any structure, device, trash, or debris caused, created or associated with the farmer's market activities in an outdoor area;

(i) Erect or display more than two (2) temporary signs to generally advertise the farmer's market, with no such sign exceeding 16 square feet in area, or for any seller and/or vendor to erect or display more than one sign or any sign greater than 10 square feet in total area. Sign permits shall not be required for signs as described above. Such signs shall not be erected more than 24 hours prior to the market's opening for sales to the public, and shall be removed within 24 hours of the markets closing for sales to the public. Streamers, pennants, search lights and any device with flashing, blinking, rotating or moving action are prohibited from use, and no sign shall be placed upon the public right-of-way, or within the vision site triangles for public street intersections or driveways as set forth in the Sign Code (Title 24.04.200 of the Code of the City of Wichita);

(j) Erect or construct any structure, tent, or building greater than 150 square feet in size, unless a building permit for a larger structure, tent or building is obtained;

(k) Conduct business or carry on activities within 50 feet of any driveway entrance or access lane from a public street to an existing business;

(l) Conduct business or carry on activities within the city right-of-way or other publicly owned property;

(m) Conduct business or carry on activities between the hours of 9:00 p.m. and 6:00 a.m.

The requirements governing location and placement of farmers markets and activities in



subsections (a), (i), (j), (k), (l) and (m) shall not be applicable to farmers markets or farmer's market vendors who participate in a community event which has been approved and issued a permit by the City of Wichita's Community Event Coordinator pursuant to the ordinances of the City of Wichita, or farmer's market events that are authorized by Wichita Festivals, Inc., pursuant to Chapter 3.14 of the Code of the City of Wichita.

SECTION 11. Section 3.94.120 of the Code of the City of Wichita, Kansas, shall read as follows: **Appeals.** An applicant or licensee may appeal the decision of the Superintendent of Central Inspection that either denies an application for a license, or revokes a license as provided in Section 3.94.100 (b). Such appeal shall be to the City Council, and must be filed in writing with the city clerk within ten (10) days after the notice of denial or revocation, has been mailed or hand-delivered to an applicant or licensee. The City Council shall conduct the hearing as soon as practical following the submittal of the appeal request, and in accordance with City Council Agenda Process guidelines or procedures established by the City Manager.

SECTION 12. Section 3.94.130 of the Code of the City of Wichita, Kansas, shall read as follows: **Enforcement.** In addition to all law enforcement officers of the city, the Superintendent of Central Inspection and all deputies under his or her supervision, and all health officers who are authorized representatives of the Director of the Environmental Services Department shall have the power to enforce the provisions of this chapter.

SECTION 13. Section 3.94.140 of the Code of the City of Wichita, Kansas, shall read as follows: **Violations, penalty.** Any person who violates any of the provision of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500). Each day that any violation of this chapter continues shall constitute a separate offense and shall be punishable hereunder as a separate violation.

SECTION 14. Section 3.94.150 of the Code of the City of Wichita, Kansas, shall read as follows: **Compliance with state statute.** Nothing in this Chapter shall be interpreted to authorize

any person licensed hereunder to transact business as a farmer's market in violation of any state statute governing the conduct of transient merchants and merchant sales, nor shall compliance with the provisions of this Chapter relieve any person from compliance with the state statutes requiring the licensing of transient merchants or merchant sales.

SECTION 15. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this, this 16<sup>th</sup> day of May, 2006.

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Carlos Mayans, Mayor

Attest:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf, Director of Law